

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-395 Re: Notice No. 851]

RIN 1512-AA07

Texas Davis Mountains Viticultural Area (97-105)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing a viticultural area located in Jeff Davis County, Texas, to be known as ``Texas Davis Mountains." The petition for this viticultural area was filed by Maymie Nelda Weisbach of Blue Mountain Vineyard, Inc. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person

may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- (a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- (b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- (c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- (d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- (e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Maymie Nelda Weisbach, of Blue Mountain Vineyard, Inc., proposing to establish a viticultural area in Jeff Davis County, Texas, to be known as ``Texas Davis Mountains." The viticultural area is located in the Trans-Pecos region of west Texas. The entire area contains approximately 270,000 acres. The petitioner stated that approximately 40 acres are planted to vineyards, and that Blue Mountain Vineyard is the only commercial grower currently active within the proposed viticultural area.

Notice of Proposed Rulemaking

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 851, in the Federal Register on May 6, 1997 [62 FR 24622], proposing the establishment of the Davis Mountains viticultural area. The notice requested comments from interested persons by July 7, 1997.

Comments on Notice of Proposed Rulemaking

ATF received five letters of comment in response to Notice No. 851. The petitioner wrote to give additional information about growers in the area. The Honorable Peggy Robertson, County Judge of Jeff Davis County, Texas, wrote to express support for the establishment of the viticultural area. Dr. Charles O. McKinney, Director of Research for the University of Texas System, wrote to support the establishment of the Davis Mountains area and comment on the boundaries. James D. Voorhees, Esq., of Davis, Graham & Stubbs, LLP, Attorneys at Law, wrote to express support for establishment of the area and commented on the proposed name. George Ray McEachern, Professor and Extension Horticulturist at the Texas A&M University System's Texas Agricultural Extension Service, wrote to support the designation of the area as ``Texas Davis Mountains." The comments on specific proposals will be discussed in the supplementary information covering such proposals.

Evidence of Name

The petitioner provided evidence that the name ``Davis Mountains" is locally known as referring to the area specified in the petition,

and suggested that the area be designated as ``Texas Davis Mountains" to aid in national recognition of the area. She noted that, outside of the State of Texas, the name Davis Mountains may not be well known. Evidence supporting the use of the name ``Davis Mountains" includes:

(a) The name ``Davis Mountains" is used to describe the northern portion of the viticultural area on a U.S.G.S. map submitted with the petition (Mount Livermore, Texas--Chihuahua). There is a park named ``Davis Mountain State Park" in the southeastern portion of the viticultural area.

(b) The 1952 edition of The Handbook of Texas, published by the Texas State Historical Association, describes the Davis Mountains. The location and other features described in this entry are consistent with the petition.

(c) The 1968 edition of Texas Today, a book in the Harlow State Geography Series, from the Harlow Publishing Corporation, describes the Davis Mountains as the most extensive and among the highest of the Texas mountain groups.

(d) Finally, the Champion Map of Texas, and the Exxon Travel Club Map of the United States, both identify the Davis Mountains by name.

After reviewing available resources and finding no references to any other ``Davis Mountains," ATF used the name ``Davis Mountains" unmodified by the word ``Texas" in the notice; however, ATF also solicited comments on the need for the additional designation of ``Texas" for the proposed viticultural area. ATF proposed using the name ``Davis Mountains" (as opposed to ``Texas Davis Mountains") based upon national recognition of the name ``Davis Mountains" as an area in Texas, known both as the site of the McDonald Observatory and as a tourist destination for its history, scenery and wildlife. In

response to this request for comments on the name of this proposed viticultural area, James D. Voorhees, Esq., of Davis, Graham & Stubbs, LLP, Attorneys at Law, wrote:

* * * there may be a wine-growing area in one of the midwestern states which is not yet designated as a viticultural area, but which is known locally as ``Davis Mountains''. * * * this would support the designation of the viticultural area sought by Mrs. Weisbach as ``Texas Davis Mountains."

In order to avoid possible consumer confusion, ATF is adopting the name ``Texas Davis Mountains" in this final rule. ATF believes it is better to allow this viticultural area to bear a distinguishing name from its inception rather than revise the name later after the establishment of another area with a similar name.

Evidence of Boundaries

The petitioner chose highways to mark the boundary of the viticultural area because these highways parallel geographic features such as canyons, creeks and escarpments, which represent natural boundaries between the mountains and the surrounding desert and define the area. In support of this approach, she provided a copy of ``Texas," the Houston Chronicle Magazine, for June 2, 1996. The cover story was ``High Mountain Vistas--Driving the 73-mile Loop Around the Davis Mountains." In a map associated with the article, the routes used for the driving tour are the same as those selected by the petitioner, except the northern boundary. The driving tour

recommendation followed a route to the north of the proposed northern boundary, which the petitioner drew using other features. Dr. Charles O. McKinney, Director of Research for the University of Texas System, also noted in his comment that the area known as Davis Mountains extends more to the north than indicated by the boundaries, but made no specific suggestion for amendment of the northern boundary. No change was made to the northern boundary as a result of this comment.

During the comment period, the petitioner wrote to say that she had learned about two additional growers, one of them within the proposed boundary (in the Davis Mountain Resort area), and another just outside the boundary at the southeast corner of the proposed area. She asked that the border be redrawn to include the vineyard just outside the proposed boundary and noted ``the same grape growing conditions would prevail" in that nearby area. Dr. McKinney also noted his support for expanding the viticultural area to include the vineyard to the southeast, saying the ``grapes from this vineyard are very similar in quality and growing characteristics as vineyards

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located a few miles away, but within the proposed viticultural area." ATF is adopting this proposed change and amending the boundary to include the additional vineyard. With the addition of these two vineyards, the viticultural area has three growers and approximately 50 acres planted to grapes.

Geographical Features

The viticultural area is described in Great Texas Getaways, copyright 1992, by Ann Ruff, as follows:

No matter which way you drive into the Davis Mountains you will have to face the barren terrain without the taste of cool water. But when you reach this wonderful oasis, those long, dreary miles are more than worth the reward. Here the days are fresh and cool, the nights brisk, and the scenery fantastic.

The viticultural area is distinguishable from surrounding areas primarily by its altitude, which contributes to the geographic and climatic features which provide for excellent grape-growing.

The petitioner provided the following evidence of the viticultural area's distinctive character:

Topography

The U.S.G.S. topographic maps used to define the viticultural area show a mountainous area varying in elevation from 4,500 to 8,300 feet, surrounded by flatter terrain. The petitioner adds that these mountains are the second-highest range in Texas. The northern and eastern limits are clearly defined by escarpments. Sharp boundaries in the west and south, however, are lacking as the same formations continue into the Ord and Del Norte Mountains. The Chihuahua desert extends for miles in all directions, its gently rolling grasses interspersed with yucca and agave.

Soil

The Davis Mountains were created about 35 million years ago by the same volcanic thrust that formed the front range of the Rockies. The mountains are composed of granitic, porphyritic and volcanic rocks, as well as limestones of various ages.

Climate

The cover story in ``Texas," the Houston Chronicle Magazine, for June 2, 1996, titled ``High mountain vistas, driving the 73-mile loop around the Davis Mountains" by Leslie Sowers, described the viticultural area as a ``mountain island * * * that is cooler, wetter, and more biologically diverse than the vast plains of the Chihuahu desert that surround it." The article went on to note that the Davis Mountains receive 20 inches of rainfall a year, contrasted with 10 inches a year in the surrounding desert.

Boundary

The boundary of the Texas Davis Mountains viticultural area may be found on two United States Geological Survey (U.S.G.S.) maps with a scale of 1:100,000. The boundary is described in Sec. 9.155.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by

this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9--AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C--Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Sec. 9.155 to read as follows:

Sec. 9.155 Texas Davis Mountains.

(a) Name. The name of the viticultural area described in this section is ``Texas Davis Mountains."

(b) Approved map. The appropriate maps for determining the boundary of the Texas Davis Mountains viticultural area are two U.S.G.S. metric topographical maps of the 1:100 000 scale, titled:

(1) ``Fort Davis, Texas," 1985.

(2) ``Mount Livermore, Texas--Chihuahua," 1985.

(c) Boundary. The Texas Davis Mountains viticultural area is

located in Jeff Davis County, Texas. The boundary is as follows:

- (1) The beginning point is the intersection of Texas Highway 17 and Farm Road 1832 on the Fort Davis, Texas, U.S.G.S. map;
- (2) From the beginning point, the boundary follows Highway 17 in a southeasterly and then southwesterly direction until it reaches the intersection of Limpia Creek with the unnamed stream which flows through Grapevine Canyon on the Fort Davis, Texas, U.S.G.S. map;
- (3) The boundary then proceeds in a straight line in a southwesterly direction until it meets Highway 118 at a gravel pit 1 $\frac{3}{4}$ miles southeast of the intersection of Highway 118 and Highway 17;
- (4) The boundary then proceeds in a straight line east by southeast until it meets Highway 166 at its junction with Highway 17;
- (5) The boundary then follows Highway 166 in a southwesterly direction onto the Mt. Livermore, Texas-Chihuahua, U.S.G.S. map;
- (6) The boundary then continues to follow Highway 166 in a westerly direction;
- (7) The boundary then continues to follow Highway 166 as it turns in a northerly and then northeasterly direction to the point where it meets Highway 118;
- (8) The boundary then follows Highway 118 in a northerly direction until it reaches a point where it intersects with the 1600 meter contour line, just north of Robbers Roost Canyon;
- (9) The boundary then proceeds in a straight line due east for about two miles until it reaches the 1600 meter contour line to the west of Friend Mountain;
- (10) The boundary then follows the 1600 meter contour line in a northeasterly direction until it reaches the northernmost point of Friend Mountain;

(11) The boundary then diverges from the contour line and proceeds in a

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straight line east-southeast until it reaches the beginning point of Buckley Canyon, approximately three fifths of a mile;

(12) The boundary then follows Buckley Canyon in an easterly direction to the point where it meets Cherry Canyon;

(13) The boundary then follows Cherry Canyon in a northeasterly direction to the point where it meets Grapevine Canyon on the Mt. Livermore, Texas-Chihuahua, U.S.G.S. map;

(14) The boundary then proceeds in a straight line from the intersection of Cherry and Grapevine Canyons to the peak of Bear Cave Mountain, on the Fort Davis, Texas, U.S.G.S. map;

(15) The boundary then proceeds in a straight line from the peak of Bear Cave Mountain to the point where Farm Road 1832 begins;

(16) The boundary then follows Farm Road 1832 back to its intersection with Texas Highway 17, at the point of beginning.

Dated: February 6, 1998.

John W. Magaw,
Director.

Approved: February 23, 1998.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98-6005 Filed 3-10-98; 8:45 am]

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